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UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA

In re

CASH CLOUD, INC.,
dba COIN CLOUD,

Debtor.

Case No. BK-23-10423-mkn

Chapter 11

**EMERGENCY MOTION FOR INTERIM
AND FINAL ORDERS: (I) AUTHORIZING
DEBTOR TO PAY PREPETITION
EMPLOYEE WAGES AND BENEFITS;
AND (II) AUTHORIZING AND
DIRECTING FINANCIAL INSTITUTIONS
TO HONOR CHECKS AND TRANSFERS
RELATED TO SUCH OBLIGATIONS**

Hearing Date: OST PENDING
Hearing Time: OST PENDING
Estimated Time for Hearing: 20 minutes

Cash Cloud, Inc., dba Coin Cloud ("Debtor"), debtor and debtor in possession in the above-captioned chapter 11 case (the "Chapter 11 Case"), hereby submits this motion (the "Motion") for entry of an interim and final order, substantially in the forms attached hereto as **Exhibit 1** and **Exhibit 2** (the "Interim Order" and the "Final Order," respectively): (i) authorizing, but not directing, the

Debtor (a) to pay prepetition wages, salaries, other compensation, and reimbursable expenses, and (b) continue employee benefits programs in the ordinary course of business, including payment of certain prepetition obligations related thereto; (ii) scheduling a final hearing to consider entry of the Final Order; and (iii) granting related relief. The Motion is made and based on sections 105(a), 363(b) and 507(a) of the Bankruptcy Code,¹ Rules 6003 and 6004 of the Bankruptcy Rules, and Rule 4001 of the Local Rules, the following memorandum of points and authorities, the *Declaration of Christopher Andrew McAlary* (the “Omnibus Declaration”) filed in support hereof, the papers and pleadings on file with the Court in this Chapter 11 Case, and any oral arguments the Court may entertain at the hearing on the Motion.

Dated this 7th day of February 2023.

FOX ROTHSCHILD LLP

By: /s/Brett Axelrod

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¹ All references to “chapter” and “section” herein shall be to the “Bankruptcy Code” appearing in Title 11 of the U.S. Code; all references to a “Bankruptcy Rule” shall refer to the Federal Rules of Bankruptcy Procedure; and all references to a “Local Rule” shall refer to the Local Rules of Bankruptcy Practice of the U.S. District Court for the District of Nevada.

MEMORANDUM OF POINTS AND AUTHORITIES

I.

JURISDICTION

1. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2)(A), (M) & (O).

2. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

3. The statutory bases for the relief requested herein are Bankruptcy Code §§ 105(a), 363(b) and 507(a) and Bankruptcy Rules 6003 and 6004.

4. Pursuant to Local Rule 9014.2, Debtor consents to entry of final order(s) or judgment(s) by the bankruptcy judge if it is determined that the bankruptcy judge, absent consent of the parties, cannot enter final orders or judgments consistent with Article III of the United States Constitution.

II.

FACTUAL BACKGROUND

A. General Background²

5. On February 7, 2023 (the “Petition Date”), Debtor filed its voluntary petition for relief under chapter 11 of the Bankruptcy Code, commencing the Chapter 11 Case in this Court. Debtor is continuing in possession of its property and is operating and managing its business as a debtor in possession, pursuant to Bankruptcy Code sections 1107 and 1108. No request has been made for the appointment of a trustee or examiner, and no statutory committee has been appointed. See id.

B. The Debtor’s Workforce

6. The Debtor currently employs 85 individuals on a full-time basis and three individuals on a part-time basis (collectively, the “Employees”). All Employees are eligible to receive certain Employee Compensation and Benefits (as those terms are defined herein). No Employee is represented by a collective bargaining unit. See Omnibus Declaration.

² A detailed description of the Debtors’ businesses and the reasons for the filing of this Chapter 11 Case and for the relief sought in this Motion are set forth in the *Omnibus Declaration of Chris McAlary in Support of First Day Motions* (the “Omnibus Declaration”) being filed contemporaneously with this Motion.

7. To supplement its workforce, the Debtor currently utilizes five independent contractors (collectively, the “Independent Contractors”), who provide critical services to the Debtor, including cash logistics, product development, and operations. To further supplement its workforce, the Debtor also currently utilizes two temporary employees (the “Temporary Employees”) in its accounting department. See Omnibus Declaration.

8. The Employees, Independent Contractors, and Temporary Employees perform a wide variety of functions crucial to the administration of this Chapter 11 Case and the Debtor’s operations. Their skills, knowledge, and understanding of the Debtor’s operations and infrastructure are essential to preserving operational stability and efficiency. The Employees, Independent Contractors, and Temporary Employees include highly trained personnel who cannot easily be replaced. Accordingly, without the continued, uninterrupted services of the Employees, Independent Contractors, and Temporary Employees, the Debtors’ reorganization will be materially impaired. See Omnibus Declaration.

9. Additionally, the vast majority of the Employees, Independent Contractors, and Temporary Employees rely exclusively on their compensation and benefits to pay their daily living expenses and to support their families. Thus, the Employees, Independent Contractors, and Temporary Employees will be exposed to significant financial constraints if the Debtor is not authorized to continue paying wages and salaries, providing benefits, and maintaining certain programs benefiting those individuals in the ordinary course of business. The Debtor, therefore, respectfully submits that the relief requested herein is necessary and appropriate under the facts and circumstances of this Chapter 11 Case. See Omnibus Declaration.

C. Workforce Compensation and Benefits

10. The Debtor seeks to minimize the personal hardship Employees, Independent Contractors, and Temporary Employees would suffer if prepetition employment-related or contractor-related obligations are not paid or remitted when due or as expected (and also minimize the resultant disruption such hardships would have on the Debtor’s operations and the administration of this Chapter 11 Case). Accordingly, as set forth in more detail below, the Debtor hereby requests authority to pay and honor certain prepetition claims or continue to honor obligations on a postpetition basis,

as applicable, relating to, among other things, wages, contractor fees, payroll processing, reimbursable expenses, federal and state withholding taxes and other amounts withheld (including garnishments, transit and parking costs, and Employees' share of insurance premiums and taxes), health insurance benefits, health savings accounts, standard life and accidental death and dismemberment ("AD&D") insurance, short and long-term disability benefits, the workers' compensation program, paid time off benefits, and miscellaneous other benefits the Debtor has historically provided to Employees, Independent Contractors, and Temporary Employees (collectively, the "Employee Compensation and Benefits"). See Omnibus Declaration.

11. By this Motion, the Debtor seeks authority to honor prepetition ordinary course obligations on account of the Employee Compensation and Benefits on an interim and final basis, as summarized in the chart below (amounts are approximate based on the Debtor's monthly average expenses).

Relief Sought	Interim Amount	Final Amount
Unpaid Wages ³	\$148,500.00	\$148,724.50
Unpaid Contractor Fees	\$16,327.27	\$16,327.27
Unpaid Temporary Employee Fees	\$11,132.80	\$11,132.80
Payroll Processing Fees (NetSuite & Ceridian)	\$0	\$0
Reimbursable Expenses	\$0	\$0
HMO Health Insurance Plan (Health Plan of Nevada) ⁴	\$14,676.24	\$14,676.24
PPO Health Insurance Plan (Sierra Health & Life)	\$28,831.93	\$28,831.93
Supplemental Insurance Benefits (Guardian)		
AD&D	\$340.09	\$340.09
Dental	\$3,870.02	\$3,870.02
Short Term Disability	\$1,033.40	\$1,033.40
Vision	\$938.61	\$938.61
Voluntary Hospital Indemnity	\$202.89	\$202.89

³ This amount only identifies prepetition wages, contractor fees, and temporary employee fees that the Debtor anticipates will be outstanding and unpaid on the Petition Date and does not include postpetition wages and fees the Debtor anticipates will accrue during the relevant postpetition portion of the current pay period.

⁴ The Debtor offers two plans through the Health Plan of Nevada

Voluntary AD&D	\$130.20	\$130.20
Voluntary Critical Illness	\$293.55	\$293.55
Voluntary Limited Percentage Benefit	\$1,622.67	\$1,622.67
Voluntary Term Life	\$793.66	\$793.66
Health Savings Accounts		
HSA Contributions	\$5,850.00	\$5,850.00
HSA Fees	\$68.25	\$68.25
Workers' Compensation Premium ⁵	\$0	\$0
Paid Time Off Benefits	\$0	\$0
Insurance Benefits Provider Fee (Shea)	\$0	\$0
Cell Phone Stipend	\$8,500.00	\$8,500.00
TOTAL	\$243,111.58	\$243,346.08

See Omnibus Declaration.

12. The Debtor hereby seeks to continue to honor the Employee Compensation Benefits provided to Employees, Contractors, and Temporary Employees on a postpetition basis in the ordinary course of business and pay all necessary costs incident to these arrangements. See Omnibus Declaration.

1. Compensation and Withholding Obligations

a. Wages

13. In the ordinary course of business, the Debtor incurs payroll obligations for base wages, salaries, and other compensation owed to Employees (the "Wages"). Employees are generally paid bi-weekly on Fridays, for the two-week period ending on the preceding Sunday (i.e., payments distributed on Friday, February 3, 2023, were for wages earned between Monday, January 16, 2023, through Sunday, January 29, 2023). Based on the Debtor's Employee base as of the Petition Date, Wages (including compensation to employee-executives) are expected to average approximately \$288,00.22 per bi-weekly pay period. See Omnibus Declaration.

14. Certain Employees are owed accrued but unpaid Wages as of the Petition Date because the majority of Employees are paid in arrears as set forth above. Wages also may be due and owing

⁵ The Debtor maintains its workers' compensation insurance policy with The Hartford. The Debtor pays its worker's compensation insurance premium in full annually. The Debtor's current worker's compensation policy is effective through October 18, 2023, and the related premium is paid current.

1 as of the Petition Date because of, among other things, potential discrepancies between the amounts
2 paid and the amounts that Employees believe should have been paid, which, upon resolution, may
3 reveal that additional amounts are owed to such Employees. See Omnibus Declaration.

4 15. As of the Petition Date, the Debtor is in the middle of the bi-weekly period beginning
5 January 30, 2023 and ending February 12, 2023 that is payable on the February 17, 2023 pay date.
6 As such, the Debtor estimates it will owe Employees approximately \$144,000.11 in accrued and
7 unpaid prepetition Wages (excluding Payroll Taxes, Deductions, and Reimbursable Expenses (each
8 as defined herein), collectively, the “Unpaid Wages”), all of which will become due and owing within
9 the first 21 days of this Chapter 11 Case. Accordingly, by this Motion, the Debtor seeks authority to
10 pay any accrued Unpaid Wages and continue to pay the Wages on a postpetition basis in the ordinary
11 course of business and consistent with past practices. The Debtor only seeks to pay any Unpaid Wages
12 up to the \$15,150 priority cap set forth in § 507(a)(4) of the Bankruptcy Code pursuant to the Interim
13 Order. The Debtor anticipates that only one Employee will have prepetition Unpaid Wages in excess
14 the priority cap. The Debtor seeks authority to pay Unpaid Wages to the extent they exceed the
15 priority cap only to the extent necessary and only upon entry of the Final Order granting the relief
16 requested herein. See Omnibus Declaration.

17 **b. Contractor Fees**

18 16. As stated above, the Debtor utilizes the services of five Independent Contractors, who
19 provide critical services to the Debtor. The Debtor hires the Independent Contractors directly and
20 pays fees for services provided by the Independent Contractors (the “Contractor Fees”) directly to
21 such Independent Contractor, pursuant to the Debtor’s operative agreement with such Independent
22 Contractor. The Independent Contractor submits periodic invoices to the Debtor. The Contractor
23 Fees are then processed through the Debtor’s accounts payable system and the Independent
24 Contractor is issued a live check, or money is wire transferred into their account, on the Friday
25 following the submission of their invoice. As of the Petition Date, the Debtors pay an average of
26 approximately \$71,840 in Contractor Fees per month for the five Independent Contractors. The
27 Contractors are not eligible to receive any of the benefits provided by the Debtors and further
28 described in this Motion.

17. As of the Petition Date, the Debtor estimates it will owe approximately \$16,327.27 on account of accrued and unpaid Contractor Fees with respect to any of the Independent Contractors (“Unpaid Contractor Fees”), all of which will become due and owing within the first 21 days of this Chapter 11 Case. Accordingly, by this Motion, the Debtor seeks authority to pay any accrued Unpaid Contractor Fees and continue to pay the Contractor Fees on a postpetition basis in the ordinary course of business and consistent with past practices. The Debtor only seeks to pay any Unpaid Contractor Fees up to the \$15,150 priority cap set forth in § 507(a)(4) of the Bankruptcy Code pursuant to the Interim Order. The Debtor seeks authority to pay Unpaid Contractor Fees in excess of the \$15,150 priority cap, only to the extent necessary, and only upon entry of the Final Order granting the relief requested herein.

c. Temporary Employee Fees

18. As stated above, the Debtor utilizes the services of two Temporary Employees. The Debtor hires the Temporary Employees through staffing agencies (the “Temporary Employee Staffing Agencies”) and pay fees for services provided by the Temporary Employees (the “Temporary Employee Fees”) through the respective Temporary Employee Staffing Agency. The Temporary Employee Staffing Agency submits periodic invoices to the Debtor. The Temporary Employee Fees are then processed through the Debtor’s accounts payable system and the Temporary Employee Staffing Agency is issued a live check or money is wire transferred into their account. As of the Petition Date, the Debtor pays an average of approximately \$11,132.80 in Temporary Employee Fees per week for the two Temporary Employees. The Temporary Employees are not eligible to receive any of the benefits provided by the Debtors and further described in this Motion.

19. As of the Petition Date, the Debtor estimates it owes accrued and unpaid Temporary Employee Fees (“Unpaid Temporary Employee Fees”) to the Temporary Employee Staffing Agencies in the total amount of approximately \$11,132.80, all of which will become due and owing within the first 21 days of this Chapter 11 Case. Accordingly, by this Motion, the Debtor seeks authority to pay any accrued Unpaid Temporary Employee Fees and continue to pay the Temporary Employee Fees on a postpetition basis in the ordinary course of business and consistent with past practices. The Debtor only seeks to pay any Unpaid Temporary Employee Fees up to the \$15,150

1 priority cap set forth in § 507(a)(4) of the Bankruptcy Code pursuant to the Interim Order. The Debtor
 2 seeks authority to pay Unpaid Temporary Employee Fees in excess of the \$15,150 priority cap, only
 3 to the extent necessary, and only upon entry of the Final Order granting the relief requested herein.

4 **d. Withholding Obligations**

5 20. The Debtor is required by federal and state laws to withhold from Employees' Wages
 6 amounts related to federal, state, and local income taxes, Medicare taxes, Social Security, and state-
 7 issued employment insurance (collectively, the "Employee Payroll Taxes") for remittance to the
 8 appropriate federal, state, or local taxing authority. Moreover, the Debtor is required by applicable
 9 statutory authority to match from its own funds Social Security, Medicare taxes, and certain additional
 10 amounts for federal and state unemployment insurance and short-term disability insurance (the
 11 "Employer Payroll Taxes" and, together with the Employee Payroll Taxes, the "Payroll Taxes").
 12 Based on the Debtors' Employee-base as of the Petition Date, Payroll Taxes are expected to average
 13 approximately \$96,417.71 per bi-weekly pay period.

14 21. The Debtor (through its provider) also routinely deducts certain amounts from
 15 Employees' Wages, including, without limitation, (a) garnishments, child support and service
 16 charges, and other similar deductions, and (b) other pre- and post-tax deductions (i) for transit and
 17 parking costs and (ii) on account of certain of the Employee Health and Welfare Benefits (as defined
 18 below), including health insurance premiums and health savings account contributions (collectively,
 19 the "Deductions," and together with the Payroll Taxes, the "Withholding Obligations").

20 22. The Debtor does not believe that it will have prepetition liabilities for accrued but
 21 unpaid Withholding Obligations that have been deducted but not remitted to the appropriate third-
 22 party payees (together, the "Unpaid Withholding Obligations"). The Debtor believes that the Unpaid
 23 Withholding Obligations generally are held in trust by the Debtor and are not property of its estate.
 24 As such, the Debtor does not believe it needs authority to remit such payments to the appropriate third
 25 parties. However, out of an abundance of caution, the Debtor seeks authority to remit the Unpaid
 26 Withholding Obligations to the respective third-party payees and to continue to honor and process the
 27 Withholding Obligations on a postpetition basis in the ordinary course of business and consistent with
 28 past practices.

e. **Payroll Processing**

23. The Debtor utilizes two outside service providers to manage its payroll. The Debtor utilizes an enterprise resource management tool (“ERM”) provided by NetSuite, Inc. (“NetSuite”) to hold and manage payroll information. The Debtor utilizes the services of Ceridian HCM, Inc. (“Ceridian”) to provide payroll processing, payroll tax calculations and filings, garnishment support and filings, check preparation, and W-2 form processing (together with the ERM, the “Payroll Services”). Each bi-weekly payroll period, Ceridian calculates the amounts owed for certain Withholding Obligations. The Debtor processes payroll with the assistance of the Payroll Services on the Tuesday before a pay date. On the Wednesday before a pay date, the Debtor transfers to a payroll funding account the amounts necessary to satisfy their Wages and Withholding Obligations and other obligations. Ceridian then withdraws the funds from the payroll funding account and processes direct deposit transfers for the Wages to each Employee into the respective Employee’s bank account or issues an actual paycheck (a “Paycheck”) if an Employee has not elected for direct deposit.⁶ Ceridian also remits the Payroll Taxes and garnishments to the applicable taxing authority or third-party payee, respectively. The Debtor calculates and remits those amounts owed on account of certain Employee Health and Welfare Benefits⁷ directly to the applicable third party payees.

24. The Debtor utilizes the NetSuite ERM for a series of its internal processes that include payroll information management. The NetSuite ERM includes integrations with Ceridian that permit the Debtor to forward information to Ceridian for processing. As an integrated resource, the NetSuite ERM is billed to the Debtor and due in full upon invoicing. However, to manage cash flow, the Debtor takes advantage of a financing option for the NetSuite ERM fee provided by Wells Fargo, which permits the Debtor to finance the NetSuite fee over 36 months. The NetSuite ERM payroll

⁶ Ceridian will also process payments and issue Paychecks: (a) to newly hired Employees who have opted for direct deposit but whose accounts have not yet been verified; (b) when state law requires the Debtor to pay outstanding owed amounts, including the Employee’s wages or salary, immediately upon termination; and (c) if there was an error calculating or entering the Employee’s time and the Employee cannot wait for that error to be remedied during the next pay cycle. Accordingly, the Debtor seeks authority to continue to issue Paychecks, as necessary, on a postpetition basis in the ordinary course of business and consistent with past practices.

⁷ Benefits deductions occur 24 times per year, whereas bi-weekly pay dates occur 26 times per year.

1 module (which includes Ceridian's fees) is \$42,200, and the financed amount is payable quarterly in
 2 the amount of \$3,516.67 (the "Payroll Processing Fees"). As of the Petition Date, the Debtor does
 3 not believe that there are outstanding Payroll Processing Fees.

4 25. The services provided by NetSuite and Ceridian are crucial to the smooth functioning
 5 of the Debtor's payroll system because they ensure that Employees are paid on time and Withholding
 6 Obligations are appropriately determined and amounts are remitted to taxing authorities and other
 7 third-party payees. As such, out of an abundance of caution, the Debtor seeks authority to satisfy any
 8 accrued but unpaid prepetition Payroll Processing Fees and continue to pay the Payroll Processing
 9 Fees on a postpetition basis in the ordinary course of business and consistent with past practices.

10 **f. Reimbursable Expenses**

11 26. The Debtors reimburse Employees and Independent Contractors for business expenses
 12 and other qualifying expenses incurred in carrying out their employment responsibilities, including,
 13 but not limited to, expenses for meals, hotels, flights, car rentals, parking, and fuel costs, and other
 14 qualifying expenses (collectively, the "Reimbursable Expenses"). Specifically, the Debtors rely on
 15 certain non-executive Employees and Independent Contractors working in the field to travel between
 16 multiple sites within a specific geographic region, sometimes weekly or even daily. Employees and
 17 Independent Contractors pay for incurred Reimbursable Expenses by using either a personal credit
 18 card or cash and then submit reimbursement requests. If the request is approved in accordance with
 19 internal policies and procedures, the Reimbursable Expenses are typically processed through the
 20 Debtor's payroll and included in the Employee's bi-weekly Wages. As of the Petition Date, the
 21 Debtor estimates that it will not have any outstanding prepetition Reimbursable Expenses.

22 27. Although the Debtor asks that reimbursement requests be submitted promptly,
 23 sometimes submission delays occur. Accordingly, Employees and Independent Contractors may
 24 submit reimbursement requests for prepetition expenses after the Petition Date. Reimbursable
 25 Expenses are incurred with the understanding that they will be reimbursed. Without continued
 26 reimbursement of the Reimbursable Expenses, Employees and Independent Contractors relying on
 27 these benefits would be saddled with additional costs, causing personal financial hardship. To avoid
 28 harming Employees and Independent Contractors who incurred Reimbursable Expenses, the Debtor

1 seeks authority to satisfy any accrued but unpaid prepetition Reimbursable Expenses, not including
 2 expenses for luxury items,⁸ and to continue to pay the Reimbursable Expenses on a postpetition basis
 3 in the ordinary course of business and consistent with past practices.

4 **2. Employee Health and Welfare Benefits**

5 28. The Debtor offers health and welfare benefits to eligible Employees for medical and
 6 dental care coverage and certain other welfare benefits, including Life and AD&D Insurance Benefits,
 7 Disability Benefits, and the Workers' Compensation Policy (each as defined herein, and collectively,
 8 the "Employee Health and Welfare Benefits").

9 **a. Health Insurance Benefits**

10 29. The Debtors offer Employees the opportunity to participate in certain health benefit
 11 plans, including the Medical Plan and the Dental Plan (each as defined below, and collectively, the
 12 "Health Insurance Benefits"). The Health Insurance Benefits are customary for similarly-sized
 13 companies and the participants and their dependents have come to rely on the Health Insurance
 14 Benefits. Without the Health Insurance Benefits, participants would be forced to either forego health
 15 benefit coverage completely or obtain potentially expensive out-of-pocket insurance coverage, which
 16 would adversely affect Employee morale. As such, the Debtor seeks authority to pay or remit all
 17 prepetition amounts due on account of the Health Insurance Benefits and continue offering the Health
 18 Insurance Benefits and pay amounts owed thereunder on a postpetition basis in the ordinary course
 19 of business and consistent with past practices.

20 30. The Debtor offers medical, vision and prescription drug coverage to current
 21 Employees (the "Medical Plan"). Under the Medical Plan, participants have two benefit options—a
 22 health maintenance organization plan option with the Health Plan of Nevada (the "HMO Plan") and
 23 preferred provider organization plan option with Sierra Health & Life (the "PPO Plan"). The Medical
 24 Plan provides coverage for, among other medical costs, outpatient and inpatient services, preventative
 25 care, and prescription drugs. Approximately 36 Employees participate in the HMO Plan and

26 ⁸ The Debtor does not believe that any outstanding prepetition Reimbursable Expenses would be on
 27 account of luxury goods or services. For the avoidance of doubt, however, to the extent prepetition
 28 Reimbursable Expenses do include luxury items, the Debtor does not hereby request authority to pay
 such amounts.

1 approximately 57 Employees participate in the PPO Plan. Participants pay bi-weekly premiums that
 2 vary depending on the level of coverage selected under their chosen Medical Plan option. As of the
 3 Petition Date, the Debtor pays on average approximately \$43,508.17 per month to provide the
 4 Medical Plan.

5 31. Shea Insurance, LLC (“Shea”) serves as the Debtor’s insurance broker and benefits
 6 provider. In this capacity, Shea assists the Debtor in developing a competitive employee benefits
 7 package for the Debtor’s employees and act as an outside benefits department. For its services, Shea
 8 receives a monthly 5% fee (the “Benefits Management Fee”) on amounts paid by the Debtor under
 9 the Medical Plan.

10 32. The Debtor also offer current Employees a dental plan (the “Dental Plan”).
 11 Approximately 79 Employees participate in the Dental Plan. Participants pay bi-weekly premiums
 12 that vary depending level of coverage selected under the Dental Plan. As of the Petition Date, the
 13 Debtor pays on average approximately \$3,870.02 per month to provide the Dental Plan.

14 33. As of the Petition Date, the Debtor believes that it may owe standard monthly amounts
 15 on account of accrued and unpaid premiums in connection with the Health Insurance Benefits
 16 (“Unpaid Health Insurance Premiums”) during the first 21 days of the Chapter 11 Case. As of the
 17 Petition Date, the Debtor does not believe that it owes amounts on account of accrued and unpaid
 18 Benefits Management Fees to Shea (the “Unpaid Benefits Management Fees”). The Debtor believes
 19 it is authorized to pay any postpetition Health Insurance Premiums or Benefits Management Fees in
 20 the ordinary course. For the avoidance of doubt, the Debtor respectfully requests authority to continue
 21 to pay the Health Insurance Premiums and Benefits Management Fees on a postpetition basis in the
 22 ordinary course of business and consistent with past practices.

23 **b. Health Savings Account**

24 34. Employees may contribute a portion of their Wages into a health savings account (the
 25 “HSA”), administered by HSA Bank. Employees may make pre-tax contributions to their HSA
 26 through payroll deductions to cover reimbursements of amounts paid for qualified medical expenses
 27 under the Medical Plan and the Dental Plan, up to the maximum amount permitted by the Internal
 28 Revenue Service. Currently, approximately 39 Employees utilize the HSA. The Debtor makes

1 contributions of approximately \$150 per month to the participating Employees' HSA Accounts (the
 2 "HSA Contributions"). As of the Petition Date, the Debtor estimates that it owes approximately
 3 \$5,850 in outstanding prepetition HSA Contributions, all of which will become due and owing within
 4 the first 21 days of this Chapter 11 Case. The Debtor does not believe that any Employee is owed
 5 amounts on account of HSA Contributions above the \$15,150 priority cap set forth in § 507(a)(4) of
 6 the Bankruptcy Code. If any amounts are owed to an Employee above the \$15,150 priority cap, the
 7 Debtor seeks to pay such amounts only upon entry of the Final Order granting the relief requested
 8 herein.

9 35. The Debtor also pays a monthly administration fee of approximately \$54.25 to HSA
 10 Bank for administration of the Employee HSAs (the "HSA Fee"). The Debtor believes that it may
 11 owe the foregoing amounts on account of the HAS Fee within the first 21 days of the Chapter 11 Case
 12 and believes that it is authorized to pay any postpetition HSA Fee in the ordinary course. Nonetheless,
 13 for the avoidance of doubt, the Debtor respectfully requests authority to continue honoring its
 14 obligations under the HSA on a postpetition basis in the ordinary course of business and consistent
 15 with past practices.

16 36. As of the Petition Date, the Debtors have not deducted any amounts from Employees'
 17 Wages on account of Employee contributions to their HSA (the "Employee HSA Deductions")
 18 because the Debtor has yet to process payroll for the current period. Accordingly, as of the Petition
 19 Date, the Debtor does not believe it owes any amounts on account of Employee HSA Deductions and
 20 believes that it is authorized to collect and remit any postpetition Employee HSA Deductions in the
 21 ordinary course. Nonetheless, for the avoidance of doubt, the Debtor respectfully requests authority
 22 to continue honoring its obligations under the HSA on a postpetition basis in the ordinary course of
 23 business and consistent with past practices.

24 **c. Other Insurance Benefits**

25 37. In the ordinary course of business, the Debtor provides Employees with certain
 26 additional insurance benefits (the "Additional Insurance Benefits") through The Guardian Life
 27 Insurance Company of America ("Guardian"). The Additional Insurance Benefits, average number
 28 of covered employees, and average monthly premiums associated with each Additional Insurance

Benefit are as follows:

Benefit	Covered Employees	Average Monthly Premium
AD&D	22	\$340.09
Short Term Disability	32	\$1,033.40
Vision	67	\$938.61
Voluntary Hospital Indemnity	19	\$202.89
Voluntary AD&D	51	\$130.20
Voluntary Critical Illness	26	\$293.55
Voluntary Limited Percentage Benefit	31	\$1,622.67
Voluntary Term Life	51	\$793.66

38. As of the Petition Date, the Debtor believes that it may owe the foregoing amounts on account of accrued and unpaid premiums in connection with the Additional Insurance Benefits (“Unpaid Additional Insurance Premiums”) within the first 21 days of the Chapter 11 Case and believes that it is authorized to pay any postpetition Additional Insurance Premiums in the ordinary course. However, Employees have come to rely on the Additional Insurance Benefits as their sole form of wage-loss relief should they suffer a covered casualty. As such, the Debtors seek authority to (i) honor any accrued but unpaid prepetition amounts on account of the Additional Insurance Premiums; (ii) remit any prepetition deductions related to the Additional Insurance Benefits to the insurer; and (iii) to continue to provide the Additional Insurance Benefits on a postpetition basis in the ordinary course of business and consistent with past practices.

d. Workers’ Compensation Benefits

39. In the ordinary course of business, the Debtor maintains workers’ compensation insurance at the level required by statute for each state in which the Debtor conducts business (the “Workers’ Compensation Policy”). The Workers’ Compensation Policy are written by The Hartford Insurance Company. The Debtor is fully insured with respect to workers’ compensation claims, so the Debtor does not incur any additional costs as a result of claims brought against such insurance.

40. For the October 18, 2022 through October 18, 2023 policy term, the total annual insurance premium is approximately \$14,535 for the Workers’ Compensation Policy (the “Workers’ Compensation Premium”). The Workers’ Compensation Premium is calculated in advance on an

1 annual basis, the amount of which is based on the Debtor's estimated gross payroll for the applicable
 2 policy year. The Workers' Compensation Premium is then subject to adjustment following an audit
 3 of the Debtor's actual earnings for the applicable policy year. The Workers' Compensation Premium
 4 is paid in full for the current policy year as of the Petition Date. The Debtor requests authority to
 5 continue to maintain the Workers' Compensation Policy and continue to pay any Workers'
 6 Compensation Premiums on a postpetition basis in the ordinary course of business and consistent
 7 with past practices.

8 **3. Paid Time Off**

9 41. In the ordinary course of business, the Debtor maintains two separate paid time off
 10 ("PTO") policies (collectively, the "PTO Policies")—one for nonexempt/hourly Employees (the
 11 "Nonexempt Policy") and another for salaried/exempt employees (the "Exempt Policy")—that both
 12 cover leisure/vacation, doctor's appointments, sick time, family time, personal time, or any other
 13 reason an Employee needs time off of work. Under the Nonexempt Policy, nonexempt/hourly
 14 Employees accrue between approximately 3.5 and 5.5 hours of PTO per week up to certain caps. The
 15 amount of a nonexempt/hourly Employee's available PTO time and the rate at which such time
 16 accrues is determined based on the nonexempt/hourly Employee's years of service with the Debtor.
 17 Under the Exempt Policy, salaried/exempt Employees are entitled to unlimited vacation subject to
 18 receiving certain internal authorizations. The Nonexempt Policy provides for payment of 40 hours
 19 of accrued PTO at termination whereas the Exempt Policy provides for no payment at termination.

20 42. The Debtor believes that the continuation of the PTO Policies in accordance with prior
 21 practice is essential to maintaining Employee morale during this Chapter 11 Case. Accordingly, the
 22 Debtor seeks authority to allow Employees to use accrued but unused PTO and to continue to honor
 23 the PTO Policies on a postpetition basis in the ordinary course of business and consistent with past
 24 practices.

25 **4. Cell Phone Stipend**

26 43. The Debtor does not provide company-issued cell phones to Employees but, instead,
 27 provides for a monthly \$100 stipend to Employees to compensate Employees for work-related voice
 28 and data charges charged to their personal cell phone accounts (the "Cell Phone Stipend"). The

Debtor pays the \$100 monthly stipend to Employees bi-weekly through payroll. As of the Petition Date, the Debtor pays approximately \$8,500 per month on account of the Cell Phone Stipend to Employees. As of the Petition Date, the Debtors estimate there is an outstanding balance of approximately \$8,500 outstanding on account of prepetition amounts related to the Cell Phone Stipend, all of which will become due and owing within the first 21 days of this Chapter 11 Case. By this Motion, the Debtor requests authority to pay the Cell Phone Stipend and, in their discretion, continue the Cell Phone Stipend on a postpetition basis in the ordinary course of business and consistent with past practices.

III.

LEGAL ARGUMENT

A. Certain Employee Compensation and Benefits Are Entitled to Priority.

Sections 507(a)(4) and 507(a)(5) of the Bankruptcy Code entitle the majority of the Employee Compensation and Benefits to priority treatment. As priority claims, the Debtor is required to pay these claims in full to confirm a chapter 11 plan. See 11 U.S.C. § 1129(a)(9)(B). To the extent that an Employee, Independent Contractor, or Temporary Employee receives no more than \$15,150 on account of claims entitled to priority, the relief sought with respect to compensation only affects the timing of payments to Employees and does not have any material negative impact on recoveries for general unsecured creditors. Indeed, the Debtor submits that payment of the Employee Compensation and Benefits at this time enhances value for the benefit of all interested parties. Finding, attracting, and training new qualified talent would be extremely difficult and would most likely require higher salaries, guaranteed bonuses, and more comprehensive compensation packages than are currently provided to Employees.

B. Payment of Certain Employee Compensation and Benefits Is Required by Law.

The Debtor seeks authority to pay the Withholding Obligations to the appropriate third-party payees. These amounts principally represent Employee earnings that governments, Employees, and judicial authorities have designated for deduction from Employees' Wages. Indeed, certain Withholding Obligations are not property of the Debtor's estate because the Debtor has withheld such amounts from Employees' Wages on another party's behalf. See 11 U.S.C. § 541(b)(1), (d).

1 Additionally, federal and state laws require the Debtor to withhold certain tax payments from
 2 Employees' Wages and to pay such amounts to the appropriate taxing authority. See, e.g., 26 U.S.C.
 3 §§ 6672, 7501(a); City of Farrell v. Sharon Steel Corp., 41 F.3d 92, 95-97 (3d Cir. 1994) (finding that
 4 state law requiring a corporate debtor to withhold city income tax from its employees' wages created
 5 a trust relationship between debtor and the city for payment of withheld income taxes); In re
 6 DuCharmes & Co., 852 F.2d 194, 196 (6th Cir. 1988) (noting that individual officers of a company
 7 may be held personally liable for failure to pay trust fund taxes). Because the Withholding
 8 Obligations are likely not property of the Debtor's estate, the Debtor requests authority to transmit
 9 the Withholding Obligations to the proper parties in the ordinary course of business.

10 Similarly, state laws require the Debtor to maintain the Workers' Compensation Policy. If the
 11 Debtor fails to maintain the Workers' Compensation Policy, state laws may prohibit the Debtors from
 12 operating in those jurisdictions. Payment of all obligations related to the Workers' Compensation
 13 Policies is therefore crucial to the Debtor's continued operations and the success of this Chapter 11
 14 Case.

15 **C. Payment of the Employee Compensation and Benefits Is Warranted Under § 363(b)(1)**
 16 **of the Bankruptcy Code and the Doctrine of Necessity.**

17 Courts generally acknowledge that it is appropriate to authorize the payment (or other special
 18 treatment) of prepetition obligations in appropriate circumstances. See In re Adams Apple, Inc., 829
 19 F.2d 1484, 1490 (9th Cir. 1987) (The Bankruptcy Code policy supporting "rehabilitation of debtors .
 20 . . may supersede the policy of equal treatment. Cases have permitted unequal treatment of pre-
 21 petition debts when necessary for rehabilitation, in such contexts as (i) pre-petition wages to key
 22 employees; (ii) hospital malpractice premiums incurred prior to filing; (iii) debts to providers of
 23 unique and irreplaceable supplies; and (iv) peripheral benefits under labor contracts."); see also In re
 24 Ionosphere Clubs, Inc., 98 B.R. 175 (Bankr. S.D.N.Y. 1989) (granting authority to pay prepetition
 25 wages); Armstrong World Indus., Inc. v. James A. Phillips, Inc. (In re James A. Phillips, Inc.), 29
 26 B.R. 391, 398 (S.D.N.Y. 1983) (granting authority to pay prepetition claims of suppliers who were
 27 potential lien claimants). In authorizing payments of certain prepetition obligations, courts have
 28 relied on several legal theories, rooted in §§ 1107(a), 1108, 363(b), 507, and 105(a) of the Bankruptcy

Code.

Pursuant to §§ 1107(a) and 1108 of the Bankruptcy Code, a debtor in possession “is a fiduciary holding the bankruptcy estate and operating the business for the benefit of its creditors and (if the value justifies) equity owners.” In re CoServ, L.L.C., 273 B.R. 487, 497 (Bankr. N.D. Tex. 2002). Implicit in the fiduciary duties of any debtor in possession is the obligation to “protect and preserve the estate, including an operating business’s going-concern value.” Id. Some courts have noted that there are instances in which a debtor can fulfill this fiduciary duty “only . . . by the preplan satisfaction of a prepetition claim.” Id. The CoServ court specifically noted that the preplan satisfaction of prepetition claims would be a valid exercise of the debtor’s fiduciary duty when the payment “is the only means to effect a substantial enhancement of the estate.” Id.

Consistent with a debtor’s fiduciary duties, courts have also authorized payment of prepetition obligations under § 363(b) of the Bankruptcy Code where a sound business purpose exists for doing so. See, e.g., Ionosphere Clubs, 98 B.R. at 175 (discussing prior order authorizing payment of prepetition wage claims pursuant to § 363(b) and noting that relief is appropriate where payment is needed to “preserve and protect its business and ultimately reorganize, retain its currently working employees and maintain positive employee morale.”); Armstrong, 29 B.R. at 397 (relying on § 363 to allow contractor to pay prepetition claims of suppliers who were potential lien claimants because the payments were necessary for general contractors to release funds owed to debtors). The business judgment standard requires that a debtor “articulate some business justification, other than mere appeasement of major creditors.” Ionosphere Clubs, 98 B.R. at 175.

This Court may also authorize payment of prepetition claims in appropriate circumstances based on § 105(a) of the Bankruptcy Code, which codifies the inherent equitable powers of the bankruptcy court and empowers the Court to “issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of the [Bankruptcy Code].” 11 U.S.C. § 105(a); see also Walls v. Wells Fargo Bank, N.A., 276 F.3d 502, 506 (9th Cir. 2002). Under § 105(a), courts may permit payments on account of prepetition obligations when essential to the continued operation of the debtor’s business. Specifically, this Court may use its power under § 105(a) to authorize payment of prepetition obligations pursuant to the “necessity of payment” rule (also referred to as the “doctrine

1 of necessity”). In re NVR L.P., 147 B.R. 126, 127-28 (Bankr. E.D. Va. 1992).

2 The “doctrine of necessity” has been recognized within the Ninth Circuit. See Adams Apple,
 3 Inc., 829 F.2d at 1490 supra; In re Berry Good, LLC, 400 B.R. 741, 747 (Bankr. D. Ariz. 2008) (“A
 4 clean line must be drawn between pre- and post-petition debt, and it is unlawful to blur those lines,
 5 *except in rare and exceptional circumstances, such as with the wage claimants.*”) (emphasis added);
 6 In re Pettit Oil Co., No. 13-47285, 2015 WL 6684225, at *8 (Bankr. W.D. Wash. Oct. 22, 2015)
 7 (denying motion for reconsideration of order granting motion to pay prepetition supplier charges
 8 where “the Ninth Circuit held that it is permissible to treat prepetition debts unequally when necessary
 9 for rehabilitation”) (citing Adams Apple, 829 F.2d at 1490). The rationale for the necessity of
 10 payment rule—the rehabilitation of a debtor in reorganization cases—is “the paramount policy and
 11 goal of Chapter 11.” Ionosphere Clubs, 98 B.R. at 175-76; see also In re Just For Feet, Inc., 242 B.R.
 12 821, 826 (D. Del. 1999) (finding that payment of prepetition claims to certain trade vendors was
 13 “essential to the survival of the debtor during the chapter 11 reorganization”); In re Quality Interiors,
 14 Inc., 127 B.R. 391, 396 (Bankr. N.D. Ohio 1991) (“A general practice has developed . . . where
 15 bankruptcy courts permit the payment of certain pre-petition claims, pursuant to 11 U.S.C. § 105,
 16 where the debtor will be unable to reorganize without such payment.”); In re Eagle-Picher Indus.,
 17 Inc., 124 B.R. 1021, 1023 (Bankr. S.D. Ohio 1991) (approving payment of prepetition unsecured
 18 claims of tool makers as “necessary to avert a serious threat to the Chapter 11 process.”); Mich.
 19 Bureau of Workers’ Disability Comp. v. Chateaugay Corp. (In re Chateaugay Corp.), 80 B.R. 279,
 20 287 (S.D.N.Y. 1987) (authorizing payment of prepetition worker’s compensation claims on grounds
 21 that the fundamental purpose of reorganization and equity powers of bankruptcy courts “is to create
 22 a flexible mechanism that will permit the greatest likelihood of survival of the debtor and payment of
 23 creditors in full or at least proportionately.”); 2 Collier On Bankruptcy, 105.02[4][a] (Alan N. Resnick
 24 & Henry J. Sommer, eds., 16th ed. 2015) (discussing cases in which courts have relied on the
 25 “doctrine of necessity” or the “necessity of payment” rule to pay prepetition claims immediately).

26 Courts also have permitted postpetition payment of prepetition claims pursuant to § 105(a) in
 27 other situations, such as if nonpayment of a prepetition obligation would trigger a withholding of
 28 goods or services essential to the debtors’ business reorganization plan. See, e.g., In re UNR Indus.,

1 Inc., 143 B.R. 506, 520 (Bankr. N.D. Ill. 1992); Ionosphere Clubs, 98 B.R. at 177.

2 This flexible approach is especially important where prepetition creditors, here Employees
3 and related third parties, provide vital goods or services to a debtor that would be unavailable if the
4 debtor did not satisfy its prepetition obligations. For example, in In re Structurlite Plastics Corp., 86
5 B.R. 922, 931 (Bankr. S.D. Ohio 1988), the bankruptcy court stated that “a bankruptcy court may
6 exercise its equity powers under §105(a) [of the Bankruptcy Code] to authorize payment of pre-
7 petition claims where such payment is necessary ‘to permit the greatest likelihood of survival of the
8 debtor and payment of creditors in full or at least proportionately.’” Id. (citation omitted). The court
9 explained that “a *per se* rule proscribing the payment of pre-petition indebtedness may well be too
10 inflexible to permit the effectuation of the rehabilitative purposes of the Code.” Id. at 932.

11 The Debtor submits that the relief requested in this Motion represents a sound exercise of the
12 Debtor’s business judgment, is necessary to avoid immediate and irreparable harm to the Debtor’s
13 estate, and is therefore justified under §§ 105(a) and 363(b) of the Bankruptcy Code and Bankruptcy
14 Rule 6003. Paying prepetition wages, employee benefits, and similar items will benefit the Debtor’s
15 estate and its creditors by allowing the Debtor’s business operations to continue without interruption.
16 The Debtor believes that without the relief requested herein, Employees may seek alternative
17 employment opportunities, perhaps with the Debtor’s competitors. Such a development would
18 deplete the Debtor’s workforce, thereby hindering the Debtor’s ability to operate its business. The
19 loss of valued Employees and resulting need to recruit new personnel (and the costs attendant thereto)
20 would be distracting at this crucial time when the Debtor needs to focus on stabilizing its business
21 operations. Accordingly, there can be no doubt that the Debtor must do its utmost to retain its
22 workforce by, among other things, continuing to honor all wage, benefits, and related obligations,
23 including the prepetition Employee Compensation and Benefits.

24 Further, the majority of Employees rely exclusively on the Employee Compensation and
25 Benefits to satisfy their daily living expenses. Consequently, Employees will be exposed to
26 significant financial difficulties if the Debtor is not permitted to honor its obligations related thereto.
27 Failure to satisfy such obligations will jeopardize Employee morale and loyalty at a time when
28 Employee support is critical to the Debtor’s business. Likewise, if this Court does not authorize the

1 Debtor to honor its various obligations under the insurance programs described herein, Employees
 2 will not receive health coverage and, thus, may be obligated to pay certain health care claims that the
 3 Debtor has not satisfied. The loss of health care coverage will result in considerable anxiety and
 4 potential financial burden for Employees (and likely attrition) at a time when the Debtor needs such
 5 Employees to perform their jobs at peak efficiency. Additionally, as set forth above, Employee
 6 attrition would cause the Debtor to incur additional expenses to find appropriate and experienced
 7 replacements, disrupting the Debtor's operations at this critical juncture.

8 The importance of a debtor's employees to its operations, and the availability of emergency
 9 relief under the doctrine of necessity generally, has been repeatedly recognized by courts in this
 10 district, and such courts have granted relief similar to the relief requested herein. See, e.g., In re Front
 11 Sight Mgmt., LLC, No. 22-11824-abl, Docket Nos. 50, 81, 141 (Bankr. D. Nev. 2022) (granting relief
 12 related to first day motions to authorize continued use of prepetition cash management system and
 13 accounts, payment of prepetition wages, and honor prepetition customer programs and obligations);
 14 In re Basic Water Co., No. 22-13252-mkn, Docket Nos. 51, 52, 97, 98 (Bankr. D. Nev. 2022)
 15 (granting authorization for adequate protection procedures for utilities and continued use of
 16 prepetition cash management); In re Musclepharm Corp., No. 22-14422-nmc, Docket Nos. 75, 76
 17 (Bankr. D. Nev. 2023) (granting motions to maintain prepetition bank accounts and pay prepetition
 18 wages); In re Splash News & Picture Agency, LLC, No. 21-11377-abl, Docket Nos. 58, 60 (Bankr.
 19 D. Nev. 2021) (authorizing payment of prepetition wage claims and use of prepetition bank accounts
 20 and cash management system); In re Alpha Guardian, a Nev. Corp., No. 20-11016-mkn, Docket Nos.
 21 62, 63, 70 (Bankr. D. Nev. 2020) (granting motions to approve payment of prepetition wages,
 22 adequate protection of prepetition utilities providers, honor prepetition customer programs and
 23 obligations); In re Red Rose, Inc. d/b/a Petersen-Dean, No. 20-12814-mkn, Docket Nos. 88, 92, 93,
 24 144, 155, 156, 313, 917 (Bankr. D. Nev. 2020) (authorizing payment of prepetition critical vendor
 25 claims, adequate protection to utilities on prepetition claims, payment of prepetition trust fund taxes,
 26 continued use of prepetition bank accounts and cash management system, and pay prepetition vendor
 27
 28

liabilities and customer reimbursements).⁹ Accordingly, the Debtor respectfully requests that the Court authorize the Debtor to pay any prepetition amounts accrued and unpaid on account of the Employee Compensation and Benefits and to continue the Employee Compensation and Benefits on a postpetition basis in the ordinary course of business and consistent with past practices.

D. The Requirements of Bankruptcy Rule 6003 Are Satisfied.

Pursuant to Bankruptcy Rule 6003, this Court may grant relief regarding a motion to pay all or part of a prepetition claim within 21 days after the Petition Date if the relief is necessary to avoid immediate and irreparable harm. Immediate and irreparable harm exists where the absence of relief would impair a debtor's ability to reorganize or threaten the debtor's future as a going concern. See, e.g., In re Ames Dep't Stores, Inc., 115 B.R. 34, 36 n.2 (Bankr. S.D.N.Y. 1990) (discussing the elements of "immediate and irreparable harm" in relation to Bankruptcy Rule 4001(c)(2)); see also FED. R. BANKR. P. 6003, Committee Notes (noting that cases applying Bankruptcy Rule 4001(b)(2) and (c)(2) may "provide guidance" for relief under Bankruptcy Rule 6003).

As described above, the Debtor's Employees, Independent Contractors, and Temporary Employees are vital to the Debtor's operations. Failure to satisfy obligations with respect to these persons in the ordinary course of business during the first 21 days of the Debtor's Chapter 11 Case will jeopardize their loyalty and trust, causing Employees, Independent Contractors, and Temporary Employees to leave the Debtor's employ, severely disrupting the Debtor's operations at a critical juncture.

Moreover, the Debtor's Employees, Independent Contractors, and Temporary Employees rely on the Employee Compensation and Benefits to pay their living expenses and the Debtor's inability to satisfy such obligations in the ordinary course of business could be financially ruinous to the Debtor's Employees, Independent Contractors, and Temporary Employees. Accordingly, the Debtor submits it has satisfied the requirements of Bankruptcy Rule 6003 to support immediate payment of the Employee Compensation and Benefits.

///

⁹ Because of the voluminous nature of the orders cited herein, such orders have not been attached to this Motion. Copies of these orders are available upon request of the Debtors' proposed counsel.

E. Waiver of Bankruptcy Rules 6004(a) and 6004(h) Are Appropriate.

To implement the foregoing successfully, the Debtor requests that the Court enter an order providing that notice of the relief requested herein satisfies Bankruptcy Rule 6004(a) and that the Debtor has established cause to exclude such relief from the 14-day stay period under Bankruptcy Rule 6004(h).

IV.

RESERVATION OF RIGHTS

Nothing contained in this Motion is intended or should be construed as an admission as to the validity of any claim against the Debtor, a waiver of the Debtor's rights to dispute any claim, or an approval or assumption of any agreement, contract, or lease under § 365 of the Bankruptcy Code. The Debtor expressly reserves its right to contest any claim related to the relief sought herein. Likewise, if the Court grants the relief sought herein, any payment made pursuant to an order of the Court is not intended to be nor should it be construed as an admission as to the validity of any claim or waive of the Debtor's rights to subsequently dispute such claim.

V.

NOTICE

The Debtor has provided notice of this Motion to: (a) the Office of the United States Trustee for the District of Nevada (United States Trustee's Office Region 17, 300 Las Vegas Boulevard South Suite 4300 Las Vegas, NV 89101); (b) the entities listed on the List of Creditors Holding the 20 Largest Unsecured Claims, filed pursuant to Bankruptcy Rule 1007(d); and (c) all parties who have requested notice pursuant to Bankruptcy Rule 2002. In light of the nature of the relief requested, the Debtor respectfully submits that no other or further notice is necessary.

VI.

NO PRIOR REQUEST

No prior request for the relief sought in this Motion has been made to this or any other court.

VII.

CONCLUSION

The Debtor respectfully requests that this Court enter an interim order and final order, substantially in the forms attached hereto as **Exhibit 1** and **Exhibit 2**, respectively, and grant the Debtor such other and further relief as is just and proper under the circumstances.

Dated this 7th day of February 2023.

FOX ROTHSCHILD LLP

By: /s/Brett Axelrod
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EXHIBIT 1

PROPOSED ORDER

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[Proposed] Counsel for Debtor

UNITED STATES BANKRUPTCY COURT

DISTRICT OF NEVADA

In re

CASH CLOUD, INC.,
dba COIN CLOUD,

Debtor.

Case No. BK-23-10423-mkn

Chapter 11

**INTERIM ORDER GRANTING DEBTOR'S
MOTION TO (I) PAY PREPETITION
EMPLOYEE WAGES AND POLICIES;
AND (II) AUTHORIZING AND
DIRECTING FINANCIAL INSTITUTIONS
TO HONOR CHECKS AND TRANSFERS
RELATED TO SUCH OBLIGATIONS**

Hearing Date: OST PENDING

Hearing Time: OST PENDING

Estimated Time for Hearing: 20 minutes

Upon the motion (the “Motion”)¹ of the above-captioned debtor and debtor in possession (the “Debtor”) for entry of an interim order (the “Interim Order”) (i) authorizing, but not directing, the Debtor (a) to pay prepetition wages, salaries, other compensation, and reimbursable expenses, and (b) continue employee benefits programs in the ordinary course of business, including payment of certain prepetition obligations related thereto; (ii) scheduling a final hearing to consider entry of the Final Order, and (iii) granting related relief as more fully set forth in the Motion; and the Court having found that the Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334; and the Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and the Court having found that venue of this Chapter 11 Case and the Motion in this District is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and the Court having found that the relief requested in the Motion is in the best interests of the Debtor’s estate, its creditors, and other parties in interest; and the Court having found that the Debtor provided appropriate notice of the Motion and the opportunity for a hearing on the Motion under the circumstances; and the Court having found that no other or further notice need be provided; and the Court having reviewed the Motion and the supporting Omnibus Declaration, having heard the statements in support of the relief requested therein at a hearing before the Court (the “Hearing”) and having considered the entire record before the Court; and the Court having determined that the legal and factual bases set forth in the Motion and at the Hearing establish just cause for the relief granted herein; and any objections to the relief requested herein having been withdrawn or overruled on the merits; and after due deliberation and sufficient cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that:

1. The Motion is GRANTED on an interim basis as set forth herein.
2. The final hearing (the “Final Hearing”) on the Motion shall be held on February __, 2023, at __:__.m., prevailing Pacific Time. Any objections or responses to entry of a final order on the Motion shall be filed on or before February __, 2023, and shall be served on: (a) proposed counsel to the Debtor (Brett A. Axelrod, Fox Rothschild LLP, 1980 Festival Plaza Drive, Suite 700, Las

¹ Unless otherwise defined herein, all capitalized terms have the definitions set forth in the Motion.

1 Vegas, Nevada 89135, baxelrod@foxrothschild.com, nkoffroth@foxrothschild.com,
 2 zwilliams@foxrothschild.com); (b) the Office of the United States Trustee for the District of Nevada
 3 (United States Trustee's Office Region 17, 300 Las Vegas Boulevard South Suite 4300 Las Vegas,
 4 NV 89101); (c) the entities listed on the List of Creditors Holding the 20 Largest Unsecured Claims,
 5 filed pursuant to Bankruptcy Rule 1007(d); and (d) all parties who have requested notice pursuant to
 6 Bankruptcy Rule 2002. In the event no objections to entry of the Final Order on the Motion are timely
 7 received, this Court may enter such Final Order without need for the Final Hearing.

8 3. The Debtor is authorized, but not directed, to continue and/or modify the Employee
 9 Compensation and Benefits in the ordinary course of business, in accordance with the Debtor's
 10 prepetition policies and practices, and, in the Debtors' discretion, to pay and honor prepetition
 11 amounts related thereto in an aggregate interim amount not to exceed \$_____; provided that,
 12 pending entry of the Final Order, the Debtors shall not honor any Employee Compensation and
 13 Benefits obligations that exceed the priority amounts set forth in § 507(a)(4) and (a)(5) of the
 14 Bankruptcy Code and shall not pay any prepetition amounts on account of Reimbursable Expenses
 15 that exceed the priority amounts set forth in § 507(a)(4) and (a)(5) of the Bankruptcy Code; provided
 16 further that nothing in this Interim Order shall be deemed to authorize the payment of any amounts
 17 which are subject to § 503(c) of the Bankruptcy Code.

18 4. Nothing in this Interim Order shall be deemed to authorize the Debtor to pay any
 19 amounts to an insider that constitute an incentive compensation program, and the Debtor shall seek
 20 authority to make any such payments to insiders by separate motion filed with this Court.

21 5. Notwithstanding the relief granted herein and any actions taken hereunder, nothing
 22 contained in the Motion or this Interim Order or any payment made pursuant to this Interim Order
 23 shall constitute, nor is it intended to constitute, an admission as to the validity or priority of any claim
 24 or lien against the Debtor, a waiver of the Debtor's rights to subsequently dispute such claim or lien,
 25 or the assumption or adoption of any agreement, contract, or lease under § 365 of the Bankruptcy
 26 Code.

27 6. Nothing in the Motion or this Interim Order shall impair the ability of the Debtor to
 28 contest the validity or amount of any payment made pursuant to this Interim Order.

7. Notwithstanding the relief granted herein or any action taken hereunder, nothing contained in this Interim Order shall create any rights in favor of, or enhance the status of any claim held by, any Employee, Independent Contractor, Temporary Employee, or other person or entity.

8. The Debtor is authorized to issue postpetition checks, or to affect postpetition fund transfer requests, in replacement of any checks or fund transfer requests that are dishonored as a consequence of this Chapter 11 Case with respect to prepetition amounts owed in connection with any Employee Compensation and Benefits or other payment authorized by this Order.

9. The Debtor is authorized to take all actions necessary to effectuate the relief granted in this Interim Order in accordance with the Motion.

10. Notice of the Motion, as stated therein, constitutes good and sufficient notice of such Motion, and the requirements of the local rules of this Court are satisfied by such notice.

11. The contents of the Motion satisfy the requirements of Bankruptcy Rule 6003(b).

12. The notice of the Motion satisfies the requirements of Bankruptcy Rule 6004(a).

13. Notwithstanding Bankruptcy Rule 6004(h), the terms and conditions of this Order are immediately effective and enforceable upon its entry.

14. This Court retains exclusive jurisdiction with respect to all matters arising from or related to the implementation, interpretation, and enforcement of this Order.

Prepared and respectfully submitted by:

FOX ROTHSCHILD LLP

By: /s/Brett A. Axelrod

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Nevada Bar No. 5859

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APPROVED/DISAPPROVED:

OFFICE OF THE UNITED STATES TRUSTEE

BY: _____

Trial Attorney for United States Trustee,
Tracy Hope Davis

CERTIFICATION OF COUNSEL PURSUANT TO LOCAL RULE 9021

In accordance with Local Rule 9021, counsel submitting this document certifies as follows:

- ☐ The Court has waived the requirement of approval in LR 9021(b)(1).
- ☐ No party appeared at the hearing or filed an objection to the motion
- ☐ I have delivered a copy of this proposed order to all counsel who appeared at the hearing, any unrepresented parties who appeared at the hearing, and each has approved or disapproved the order, or failed to respond, as indicated below:

Trial Attorney
Office of the United States Trustee

Approved / Disapproved

- ☐ I certify that this is a case under Chapter 7 or 13, that I have served a copy of this order with the motion pursuant to LR 9014(g), and that no party has objected to the form or content of the order.

###

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EXHIBIT 2

PROPOSED ORDER

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[Proposed] Counsel for Debtor

UNITED STATES BANKRUPTCY COURT

DISTRICT OF NEVADA

In re

CASH CLOUD, INC.,
dba COIN CLOUD,

Debtor.

Case No. BK-23-10423-mkn

Chapter 11

**FINAL ORDER AUTHORIZING
DEBTOR'S MOTION TO (I) PAY
PREPETITION EMPLOYEE WAGES AND
POLICIES; AND (II) AUTHORIZING AND
DIRECTING FINANCIAL INSTITUTIONS
TO HONOR CHECKS AND TRANSFERS
RELATED TO SUCH OBLIGATIONS**

Hearing Date: OST PENDING
Hearing Time: OST PENDING
Estimated Time for Hearing: 20 minutes

Upon the motion (the “Motion”)¹ of the above-captioned debtor and debtor in possession (the “Debtor”) for entry of a final order (the “Final Order”) (i) authorizing, but not directing, the Debtor (a) to pay prepetition wages, salaries, other compensation, and reimbursable expenses, and (b) continue employee benefits programs in the ordinary course of business, including payment of certain prepetition obligations related thereto; (ii) scheduling a final hearing to consider entry of the Final Order, and (iii) granting related relief as more fully set forth in the Motion; and the Court having found that the Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334; and the Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and the Court having found that venue of this Chapter 11 Case and the Motion in this District is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and the Court having found that the relief requested in the Motion is in the best interests of the Debtor’s estate, its creditors, and other parties in interest; and the Court having found that the Debtor provided appropriate notice of the Motion and the opportunity for a hearing on the Motion under the circumstances; and the Court having found that no other or further notice need be provided; and the Court having reviewed the Motion and the supporting Omnibus Declaration, having heard the statements in support of the relief requested therein at a hearing before the Court (the “Hearing”) and having considered the entire record before the Court; and the Court having determined that the legal and factual bases set forth in the Motion and at the Hearing establish just cause for the relief granted herein; and any objections to the relief requested herein having been withdrawn or overruled on the merits; and after due deliberation and sufficient cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that:

1. The Motion is GRANTED on a final basis as set forth herein.
2. The Debtor is authorized, but not directed, to continue and/or modify the Employee Compensation and Benefits in the ordinary course of business, in accordance with the Debtor’s prepetition policies and practices, and, in the Debtors’ discretion, to pay and honor prepetition amounts related thereto; provided that, prior to making any payments on account of the Employee

¹ Unless otherwise defined herein, all capitalized terms have the definitions set forth in the Motion.

1 Compensation and Benefits that exceed the priority amounts set forth in §§ 507(a)(4) and 507(a)(5),
 2 the Debtor will provide notice to (a) the Office of the United States Trustee for the District of Nevada
 3 (United States Trustee's Office Region 17, 300 Las Vegas Boulevard South Suite 4300 Las Vegas,
 4 NV 89101); (b) the official committee of unsecured creditors (if any) appointed in these chapter 11
 5 cases (the "Committee") and its counsel; and (c) all parties who have requested notice pursuant to
 6 Bankruptcy Rule 2002; and provided further that nothing in this Final Order shall be deemed to
 7 authorize the payment of any amounts which are subject to § 503(c) of the Bankruptcy Code.

8 3. Nothing in this Final Order shall be deemed to authorize the Debtor to pay any amounts
 9 to an insider that constitute an incentive compensation program, and the Debtor shall seek authority
 10 to make any such payments to insiders by separate motion filed with this Court.

11 4. Notwithstanding the relief granted herein and any actions taken hereunder, nothing
 12 contained in the Motion or this Final Order or any payment made pursuant to this Final Order shall
 13 constitute, nor is it intended to constitute, an admission as to the validity or priority of any claim or
 14 lien against the Debtor, a waiver of the Debtor's rights to subsequently dispute such claim or lien, or
 15 the assumption or adoption of any agreement, contract, or lease under § 365 of the Bankruptcy Code.

16 5. Nothing in the Motion or this Final Order shall impair the ability of the Debtor to
 17 contest the validity or amount of any payment made pursuant to this Final Order.

18 6. Notwithstanding the relief granted herein or any action taken hereunder, nothing
 19 contained in this Final Order shall create any rights in favor of, or enhance the status of any claim
 20 held by, any Employee, Independent Contractor, Temporary Employee, or other person or entity.

21 7. The Debtor is authorized to issue postpetition checks, or to affect postpetition fund
 22 transfer requests, in replacement of any checks or fund transfer requests that are dishonored as a
 23 consequence of this Chapter 11 Case with respect to prepetition amounts owed in connection with
 24 any Employee Compensation and Benefits or other payment authorized by this Final Order.

25 8. The Debtor is authorized to take all actions necessary to effectuate the relief granted
 26 in this Final Order in accordance with the Motion.

27 9. Notice of the Motion, as stated therein, constitutes good and sufficient notice of such
 28 Motion, and the requirements of the local rules of this Court are satisfied by such notice.

10. The contents of the Motion satisfy the requirements of Bankruptcy Rule 6003(b).

11. The notice of the Motion satisfies the requirements of Bankruptcy Rule 6004(a).

12. Notwithstanding Bankruptcy Rule 6004(h), the terms and conditions of this Order are immediately effective and enforceable upon its entry.

13. This Court retains exclusive jurisdiction with respect to all matters arising from or related to the implementation, interpretation, and enforcement of this Order.

Prepared and respectfully submitted by:

FOX ROTHSCHILD LLP

By: /s/Brett A. Axelrod

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[Proposed] Counsel for Debtor

APPROVED/DISAPPROVED:

OFFICE OF THE UNITED STATES TRUSTEE

BY: _____

Trial Attorney for United States Trustee,
Tracy Hope Davis

CERTIFICATION OF COUNSEL PURSUANT TO LOCAL RULE 9021

In accordance with Local Rule 9021, counsel submitting this document certifies as follows:

- ☐ The Court has waived the requirement of approval in LR 9021(b)(1).
- ☐ No party appeared at the hearing or filed an objection to the motion
- ☐ I have delivered a copy of this proposed order to all counsel who appeared at the hearing, any unrepresented parties who appeared at the hearing, and each has approved or disapproved the order, or failed to respond, as indicated below:

Trial Attorney
Office of the United States Trustee

Approved / Disapproved

- ☐ I certify that this is a case under Chapter 7 or 13, that I have served a copy of this order with the motion pursuant to LR 9014(g), and that no party has objected to the form or content of the order.

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